

KEKER & VAN NEST LLP
ROBERT A. VAN NEST - # 84065
BRIAN L. FERRALL - # 160847
DAVID SILBERT - # 173128
MICHAEL S. KWUN - #198945
633 Battery Street
San Francisco, CA 94111-1809
Telephone: (415) 391-5400
Email: rvannest@kvn.com;
bferrall@kvn.com; dsilbert@kvn.co
mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

JONATHAN M. JACOBSON, NY SBN 1350495

CHUL PAK (*pro hac vice*)

DAVID H. REICHENBERG (*pro hac vice*)

WILSON SONSINI GOODRICH & ROSÁTI

Professional Corporation

1301 Avenue Of The Americas, 40th Floor

New York, NY 10019-6022

Telephone: (212) 999-5800

Email: jjacobson@wsgr.com; cpak@wsgr.com;

dreichenberg@wsgr.com

Attorneys for Defendant ARISTA NETWORKS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Case No. 5:14-cv-05344-BLF (NC)

Plaintiff,

V.

ARISTA NETWORKS, INC.

Defendant.

**DECLARATION OF DAVID J. ROSEN IN
SUPPORT OF DEFENDANT ARISTA
NETWORKS, INC.'S ADMINISTRATIVE
MOTION TO FILE DOCUMENTS UNDER
SEAL IN CONNECTION WITH ARISTA'S
OPPOSITIONS TO CISCO'S MOTIONS
IN LIMINE NOS. 1-5**

Judge: Hon. Beth Labson Freeman

Date Filed: December 5, 2014

Trial Date: November 21, 2016

DECLARATION OF DAVID J. ROSEN IN SUPPORT OF DEFENDANT ARISTA NETWORKS, INC.'S
ADMINISTRATIVE MOTION TO FILE DOCUMENTS UNDER SEAL
Case No. 5:14-cv-05344-BLF (NC)

1 I, DAVID J. ROSEN, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and admitted to
 3 practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and
 4 counsel for Defendant Arista Networks, Inc. (“Arista”) in the above-captioned action. I have
 5 personal knowledge of the facts stated herein and, if called as a witness, I could testify
 6 competently thereto.

7 2. I submit this declaration in support of Arista’s Administrative Motion to File
 8 Documents Under Seal in connection with Arista’s Oppositions to Plaintiff Cisco Systems, Inc.’s
 9 (“Cisco”) Motions *in Limine* Nos. 1–5.

10 3. Cisco’s Motions *In Limine* Nos. 1–5 are all non-dispositive motions. In this
 11 context, I understand that materials may be sealed so long as the party seeking sealing makes a
 12 “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure
 13 26(c). *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting
 14 *Foltz v. State Farm Mutual Auto Insurance Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In
 15 addition, Civil Local Rule 79-5 requires that a party seeking sealing “establish[] that the
 16 document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to
 17 protection under the law” (*i.e.*, that the document is “sealable”). Civil L.R. 79-5(b). The sealing
 18 request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

19 4. Arista seeks to seal the following documents, as well as the following material
 20 attached to the Declaration of Ryan Wong in Support of Arista’s Oppositions to Cisco’s Motions
 21 *in Limine* Nos. 1–5 (“Wong Decl.” or “Wong Declaration”):

Document	Portions of Document to be Sealed	Parties Claiming Confidentiality
Arista’s Opposition to Cisco’s Motion <i>in Limine</i> No. 1	Highlighted portions	<i>Cisco</i>
Arista’s Opposition to Cisco’s Motion <i>in Limine</i> No. 2	Highlighted portions	<i>Cisco</i> <i>HP, Dell, Juniper (Third Parties)</i>

Document	Portions of Document to be Sealed	Parties Claiming Confidentiality
Arista's Opposition to Cisco's Motion <i>in Limine</i> No. 3	Highlighted Portions	<i>Cisco, Arista</i>
Arista's Opposition to Cisco's Motion <i>in Limine</i> No. 4	Highlighted Portions	<i>Cisco</i>
Arista's Opposition to Cisco's Motion <i>in Limine</i> No. 5	Highlighted Portions	<i>Cisco</i>
Exhibit 4 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 ("Wong Decl.") (CSI-ANI-00252097)	Entire Document	<i>Cisco</i>
Exhibit 8 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 (Excerpts from the May 20, 2016 Depo. Tr. of Gavin Cato)	Entire Document	<i>Dell (Third Party)</i>
Exhibit 9 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 (Excerpts from the Feb. 16, 2016 Depo Tr. of Philip Kasten)	Entire Document	<i>Juniper (Third Party)</i>
Exhibit 10 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 (Excerpts from the May 2, 2016 Depo Tr. of Balaji Venkatraman)	Entire Document	<i>Cisco</i> <i>HP (Third Party)</i>

Document	Portions of Document to be Sealed	Parties Claiming Confidentiality
Exhibit 11 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 (Excerpts from the March 31, 2016 Depo Tr. of Phillip Remaker)	Entire Document	<i>Cisco</i>
Exhibit 12 to the Declaration of Ryan Wong in Support of Arista's Opposition to Cisco's Motions <i>in Limine</i> Nos. 1–5 (CSI-CLI-00754391)	Entire Document	<i>Cisco</i>
Exhibit 19 to the Wong Decl. (Excerpts from the June 7, 2016 Depo. Tr. of Frank Palumbo)	Entire Document	<i>Cisco</i>
Exhibit 22 to the Wong Decl. (Excerpts from July 26, 2016 Depo. Tr. of Judith Chevalier)	Entire Document	<i>Cisco, Arista</i>
Exhibit 23 to the Wong Decl. ("Exhibit Copying-2" to the Opening Expert Report of Kevin Almeroth)	Entire Document	<i>Cisco</i>
Exhibit 27 to the Wong Decl. (Transcript excerpts from Jan. 29, 2016 Depo. of Adam Sweeney)	Entire Document	<i>Cisco</i>
Exhibit 31 to the Wong Decl. (Excerpts from May 25, 2016 Depo. Tr. of Terry Eger)	Entire Document	<i>Cisco, Arista</i>
Exhibit 34 to the Wong Decl. (CSI-CLI-05646048)	Entire Document	<i>Cisco</i>
Exhibit 35 to the Wong Decl. (CSI-CLI-06023246)	Entire Document	<i>Cisco</i>

Document	Portions of Document to be Sealed	Parties Claiming Confidentiality
Exhibit 36 to the Wong Decl. (CSI-CLI-00843944)	Entire Document	Cisco

5. The highlighted portions of Arista's Opposition to Cisco's Motion *in Limine* No. 1
 6. are being filed under seal under Civil L.R. 79-5(e) because they refer to and describe record
 7. evidence that Cisco designated as either "Confidential" or "Highly Confidential – Attorney's
 8. Eyes Only" under the Protective Order. Arista takes no position as to whether the highlighted
 9. portions of this brief are, in fact, confidential to Cisco for purposes of this sealing motion, and
 10. takes no position regarding whether they should be sealed under the "good cause" standard and
 11. Civil L.R. 79-5(b). Arista is only filing this document under seal to provide Cisco with the
 12. opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify sealing that material.

6. The highlighted portions of Arista's Opposition to Cisco's Motion *in Limine* No. 2
 13. are being filed under seal under Civil L.R. 79-5(e) because they disclose information that Cisco
 14. and third-parties Hewlett Packard Enterprise (HP), Dell, and Juniper Networks designated
 15. "Highly Confidential" or "Confidential" under the Protective Order. Arista takes no position as
 16. to whether the highlighted portions of this brief are, in fact, confidential to Cisco or those third
 17. parties for purposes of this sealing motion, and takes no position regarding whether they should
 18. be sealed under the "good cause" standard and Civil L.R. 79-5(b). Arista is only filing this
 19. document under seal to provide Cisco and those third parties with the opportunity to submit a
 20. declaration under Civil L.R. 79(e)(1) to justify sealing that material.

7. The highlighted portions of Arista's Opposition to Cisco's Motion *in Limine* No. 3
 21. are being filed under seal under Civil L.R. and 79-5(d)(1)(A) and 79-5(e) because they disclose
 22. confidential information of both Arista and Cisco. Good cause exists to seal those portions of this
 23. document because they reveal non-public, confidential customer and sales information regarding
 24. Arista's customers. *See Samsung*, 727 F.3d at 1221–22 (Fed. Cir. 2013) (sealing is appropriate
 25. even under the compelling standards threshold if the release of the information will cause
 26. competitive harm to a business); *Ovonic Battery Co. v. Sanyo Elec. Co.*, Case No. 14-cv-01637,

1 2014 WL 2758756, at *2-3 (N.D. Cal. June 17, 2014) (where public disclosure of business
 2 information could harm a litigant's competitive standing by placing it "in a diminished bargaining
 3 position in future negotiations with potential customers and competitors," the records should be
 4 sealed).

5 8. The highlighted portions of Arista's Opposition to Cisco's Motion *in Limine* No. 4
 6 are being filed under seal under Civil L.R. 79-5(e) because they refer to and describe information
 7 that Cisco designated as either "Confidential" or "Highly Confidential – Attorney's Eyes Only"
 8 under the Protective Order—specifically, they refer to and describe opinions expressed in Cisco's
 9 technical expert's Opening Expert Report, which Cisco designated as "Highly Confidential"
 10 under the Protective Order. Arista takes no position as to whether the highlighted portions of this
 11 brief are, in fact, confidential to Cisco for purposes of this sealing motion, and takes no position
 12 regarding whether they should be sealed under the "good cause" standard and Civil L.R. 79-5(b).
 13 Arista is only filing this document under seal to provide Cisco with the opportunity to submit a
 14 declaration under Civil L.R. 79(e)(1) to justify sealing that material.

15 9. The highlighted portions of Arista's Opposition to Cisco's Motion *in Limine* No. 5
 16 are being filed under seal under Civil L.R. 79-5(e) because they refer to and describe information
 17 that Cisco designated as either "Confidential" or "Highly Confidential – Attorney's Eyes Only"
 18 under the Protective Order—specifically, they refer to and describe the deposition testimony of
 19 Terry Eger, which Cisco designated as "Highly Confidential" under the Protective Order. Arista
 20 takes no position as to whether the highlighted portions of this brief are, in fact, confidential to
 21 Cisco for purposes of this sealing motion, and takes no position regarding whether they should be
 22 sealed under the "good cause" standard and Civil L.R. 79-5(b). Arista is only filing this
 23 document under seal to provide Cisco with the opportunity to submit a declaration under Civil
 24 L.R. 79(e)(1) to justify sealing that material.

25 10. Exhibit 4 to the Wong Declaration is a document produced by Cisco with Bates
 26 stamp CSI-ANI-00252193. It is being filed under seal under Civil L.R. 79-5(e) because Cisco
 27 designated the document "Highly Confidential" under the Protective Order. Arista does not seek
 28 to seal any of the document and takes no position regarding whether it should be sealed under the

1 “good cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to
 2 provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 3 sealing that material.

4 11. Exhibit 8 to the Wong Declaration is a copy of transcript excerpts from the
 5 deposition of Gavin Cato taken on May 20, 2016. It is being filed under seal under Civil L.R. 79-
 6 5(e) because Dell, a third party, designated the transcript as “Highly Confidential” under the
 7 Protective Order. Arista does not seek to seal any of these particular transcript excerpts and takes
 8 no position regarding whether it should be sealed under the “good cause” standard and Civil L.R.
 9 79-5(b). Arista is only filing this document under seal to provide Dell with the opportunity to
 10 submit a declaration under Civil L.R. 79(e)(1) to justify sealing that material.

11 12. Exhibit 9 to the Wong Declaration is a copy of transcript excerpts from the
 12 deposition of Philp Kasten taken on February 16, 2016. It is being filed under seal under Civil
 13 L.R. 79-5(e) because Juniper Networks, a third party, designated the transcript as “Highly
 14 Confidential” under the Protective Order. Arista does not seek to seal any of these particular
 15 transcript excerpts and takes no position regarding whether it should be sealed under the “good
 16 cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to provide
 17 Juniper Networks with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 18 sealing that material.

19 13. Exhibit 10 to the Wong Declaration is a copy of transcript excerpts from the
 20 deposition of Balaji Venkatraman taken on May 2, 2016. It is being filed under seal under Civil
 21 L.R. 79-5(e) because HP, a third party, and Cisco both designated the transcript as “Highly
 22 Confidential” under the Protective Order. Arista does not seek to seal any of these particular
 23 transcript excerpts and takes no position regarding whether it should be sealed under the “good
 24 cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to provide
 25 HP and Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 26 sealing that material.

27 14. Exhibit 11 to the Wong Declaration is a copy of transcript excerpts from the
 28 deposition of Phillip Remaker taken on March 31, 2016. It is being filed under seal under Civil

1 L.R. 79-5(e) because Cisco designated the transcript as “Highly Confidential” under the
 2 Protective Order. Arista does not seek to seal any of these particular transcript excerpts and takes
 3 no position regarding whether it should be sealed under the “good cause” standard and Civil L.R.
 4 79-5(b). Arista is only filing this document under seal to provide Cisco with the opportunity to
 5 submit a declaration under Civil L.R. 79(e)(1) to justify sealing that material.

6 15. Exhibit 12 to the Wong Declaration is a document produced by Cisco with Bates
 7 stamp CSI-CLI-00754391. It is being filed under seal under Civil L.R. 79-5(e) because Cisco
 8 designated the document “Highly Confidential” under the Protective Order. Arista does not seek
 9 to seal any of the document and takes no position regarding whether it should be sealed under the
 10 “good cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to
 11 provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 12 sealing that material.

13 16. Exhibit 19 to the Wong Declaration is a copy of transcript excerpts from the
 14 deposition of Frank Palumbo, taken on June 7, 2016. It is being filed under seal under Civil L.R.
 15 79-5(e) because Cisco designated the transcript as “Highly Confidential” under the Protective
 16 Order. Arista does not seek to seal any of these particular transcript excerpts and takes no
 17 position regarding whether it should be sealed under the “good cause” standard and Civil L.R. 79-
 18 5(b). Arista is only filing this document under seal to provide Cisco with the opportunity to
 19 submit a declaration under Civil L.R. 79(e)(1) to justify sealing that material.

20 17. Exhibit 22 to the Wong Declaration is a copy of transcript excerpts from the
 21 deposition of Judith Chevalier, Cisco’s damages expert, taken on June 7, 2016. Good cause exists
 22 to seal the Report in its entirety because confidential information of both parties is discussed
 23 throughout the excerpted deposition transcript regarding non-public customer, sales, and financial
 24 information from both parties. *See Samsung*, 727 F.3d at 1221–22 (Fed. Cir. 2013) (sealing is
 25 appropriate even under the compelling standards threshold if the release of the information will
 26 cause competitive harm to a business); *Ovonic Battery Co. v. Sanyo Elec. Co.*, Case No. 14-cv-
 27 01637, 2014 WL 2758756, at *2-3 (N.D. Cal. June 17, 2014) (where public disclosure of business
 28 information could harm a litigant’s competitive standing by placing it “in a diminished bargaining

1 position in future negotiations with potential customers and competitors," the records should be
 2 sealed). Arista is also filing this document under seal under Civil L.R. 79-5(e) because Cisco
 3 designated the transcript as "Highly Confidential" under the Protective Order. Arista does not
 4 seek to seal any of these particular transcript excerpts and takes no position regarding whether it
 5 should be sealed under the "good cause" standard and Civil L.R. 79-5(b). Arista is only filing
 6 this document under seal to provide Cisco with the opportunity to submit a declaration under
 7 Civil L.R. 79(e)(1) to justify sealing that material.

8 18. Exhibit 23 to the Wong Declaration is a copy of "Exhibit Copying-2" to the
 9 Opening Expert Report of Kevin C. Almeroth, dated June 3, 2016. It is being filed under seal
 10 under Civil L.R. 79-5(e) because Cisco designated Dr. Almeroth's Opening Expert Report and
 11 this document as "Highly Confidential" under the Protective Order. Arista does not seek to seal
 12 any material in this document and takes no position regarding whether it should be sealed under
 13 the "good cause" standard and Civil L.R. 79-5(b). Arista is only filing this document under seal
 14 to provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 15 sealing that material.

16 19. Exhibit 27 to the Wong Declaration is a copy of transcript excerpts from the
 17 deposition of Adam Sweeney, taken on January 29, 2016. It is being filed under seal under Civil
 18 L.R. 79-5(e) because Cisco designated the transcript as "Highly Confidential" under the
 19 Protective Order. Arista does not seek to seal any of these particular transcript excerpts and takes
 20 no position regarding whether it should be sealed under the "good cause" standard and Civil L.R.
 21 79-5(b). Arista is only filing this document under seal to provide Cisco with the opportunity to
 22 submit a declaration under Civil L.R. 79(e)(1) to justify sealing that material.

23 20. Exhibit 31 to the Wong Declaration is a copy of transcript excerpts from the
 24 deposition of Terry Eger, taken on May 25, 2016. This exhibit contains confidential Arista
 25 business information at page 28:2–25. There is good cause to seal that specific portion of this
 26 exhibit because it discusses and discloses internal, non-public information regarding Arista
 27 business planning and sales operations. *See In re Elec. Arts, Inc.*, 298 F. App'x Case 5:14-cv-
 28 05344-BLF at 569–70; *Delphix*, 2014 WL 4145520, at *2; *Koninklijke Philips*, 2015 WL 581574,

1 at *1–2; *see also Schwartz*, 2016 WL 1301186, at *2 (discussing the harm that could result by the
 2 dissemination of similar sensitive internal business information to competitors, who would find it
 3 valuable). The remaining portions of this exhibit is only being filed under seal under Civil L.R.
 4 79-5(e) because Cisco designated the transcript as “Highly Confidential” under the Protective
 5 Order. Arista does not seek to seal the remaining portions of this particular transcript (beyond the
 6 specific portion it seeks to seal as described above) and takes no position regarding whether those
 7 portions should be sealed under the “good cause” standard and Civil L.R. 79-5(b). Arista is only
 8 filing those portions of this exhibit under seal to provide Cisco with the opportunity to submit a
 9 declaration under Civil L.R. 79(e)(1) to justify sealing that material.

10 21. Exhibit 34 to the Wong Declaration is a document produced by Cisco with Bates
 11 stamp CSI-CLI-05646048. It is being filed under seal under Civil L.R. 79-5(e) because Cisco
 12 designated the document “Highly Confidential” under the Protective Order. Arista does not seek
 13 to seal any of the document and takes no position regarding whether it should be sealed under the
 14 “good cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to
 15 provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 16 sealing that material.

17 22. Exhibit 35 to the Wong Declaration is a document produced by Cisco with Bates
 18 stamp CSI-CLI-06023246. It is being filed under seal under Civil L.R. 79-5(e) because Cisco
 19 designated the document “Highly Confidential” under the Protective Order. Arista does not seek
 20 to seal any of the document and takes no position regarding whether it should be sealed under the
 21 “good cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to
 22 provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
 23 sealing that material.

24 23. Exhibit 36 to the Wong Declaration is a document produced by Cisco with Bates
 25 stamp CSI-CLI-00843944. It is being filed under seal under Civil L.R. 79-5(e) because Cisco
 26 designated the document “Highly Confidential” under the Protective Order. Arista does not seek
 27 to seal any of the document and takes no position regarding whether it should be sealed under the
 28 “good cause” standard and Civil L.R. 79-5(b). Arista is only filing this document under seal to

1 provide Cisco with the opportunity to submit a declaration under Civil L.R. 79(e)(1) to justify
2 sealing that material.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct and that this declaration was executed on September 16, 2016, in
5 San Francisco, California.

6
7 *s/*David J. Rosen
8 DAVID J. ROSEN
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